

QUARTERLY PROGRESS REPORT
Municipal Infrastructure Support Program

USAID Award No.: 170-A-00-01-00103-00
Cooperative Agreement Period: August 2, 2001 – January 31, 2003
Reporting Period: January 1, 2001 – March 31, 2001

**USAID Cognizant
Technical Officer:** William Gelman (Podgorica)

I. INTRODUCTION

Goals/objectives:

The International City/County Management Association (ICMA) established the *US – Montenegro Partnership for Municipal Development* in November 1999, initially under a one-year grant from the U.S. Agency for International Development (USAID). Phase I activities were designed to assist local governments in responding more effectively and efficiently to increased demands on municipal services due to the influx of internally displaced persons from the Kosovo conflict. The ICMA grant, which expanded and was extended until December 2002, now serves as the technical and operational hub for USAID assistance to the local government sector in Montenegro.

The Municipal Infrastructure Support Program (MISP) was conceived as support to the Partnership for Municipal Development to accomplish several goals:

- Sustain the reforms once the local government laws are enacted
- Provide projects by which to demonstrate transparent municipal finance policies, systems and practices
- Provide opportunities for increased citizen participation
- Improve capacity of local governments to respond more effectively and efficiently to increased demands on municipal services

Seven municipalities have been designated “Centers of Excellence” and will receive infrastructure grants to undertake specific capital investment projects as a training tool to refine and leverage Partnership policy reform and capacity building activities. In addition, the program will assist municipalities to develop their capabilities in the areas of multi-year financial planning and Capital Improvement Planning (CIP). The technical assistance component of the project is intended to enhance the capabilities of municipalities to assume responsibility for their own infrastructure development.

ICMA/MISP offers an integrated package of training and technical interventions designed to:

- A. Improve the municipal project planning and design process
- B. Improve municipal financial management skills and practices

- C. Familiarize municipalities with the new Public Procurement Law (PPL), and provide active municipal project management pursuant to the new law
- D. Improve Municipal Constituency Outreach Skills

Counterparts:

Principal counterparts include: (1) the municipalities of Tivat, Kotor, Ulcinj, Cetinje, Nikšić, Pljevlja and Berane.

II. ACCOMPLISHMENTS:

(A) Improve Municipal Project Planning And Design Capabilities

- Recruited and hired MISP key personnel: International - Michael Geldfeld, Chief Engineer: Local – Indira Kurtic, Goran Ignjatovic, Nenad Milenkovic, Dobrila Djokic, Darko Zivaljevic: Translator – Dragana Curovic.

Development of municipal projects:

Under MISP the municipalities play the lead role in planning, proposing, designing, and undertaking the work. ICMA/MISP provides technical assistance (TA), training, and review. Projects are to be developed in three rounds, to provide multiple opportunities for hands-on experience by the municipalities.

- ICMA/MISP reevaluated the initial reviews and preliminary approvals of 1st round municipal proposed infrastructure projects and assisted municipalities in assembling proposals to USAID. Final proposals submitted for Niksic, Kotor, and Tivat. Draft proposals submitted for Berane and Pljevlja.
- ICMA/MISP trained the local MISP staff on the concept of an environmental assessment for each project and the need to define each project with regard to a Problem Statement, Project Objectives, Project Description, and Project Benefits.
- MISP training meeting with mayors, deputy mayors and officials from municipal finance, urban planning and public works departments from all seven MISP-designated municipalities. The goals and criteria of the program were reiterated, and problems and concerns were discussed. A procedure for defining, approving, and designing of projects was discussed and agreed upon. This procedure forms the basis for a Typical (Generic) Project Schedule.
- MISP conducted several program meetings with each of the seven mayors and municipal officials to discuss project progress and status.
- MISP met with municipal engineering staff and municipal designers on numerous occasions to review progress and quality of project designs. During each of these

meetings MISP staff provided training for preparing specifications and drawings to meet the requirements of the new Law on Public Procurement

Review of projects:

- Reviewed in depth and revised Technical Conditions (Specifications) and Drawings for first round projects in Kotor, Tivat, and Niksic. Changes and enhancements made by MISP staff were necessary to have the engineering documents satisfy the needs of the Law on Public Procurement (PPL). MISP assisted the municipality to prepare the environmental assessment.
- Reviewed the design criteria for Berane sewer project and suggested changes and modifications to the municipality and designer. Began in-depth enhancements of specifications and drawings. Reviewed the Montenegrin Republic level requirements for discharging raw sewage into waterways, and required the municipality to pursue the need for a Republic level permit to discharge.
- Reviewed Pljevlja pump station project and suggested alternate project based on designer refusing to comply with making necessary enhancements to design.
- Reviewed Ulcinj project and assisted municipality in procuring a design engineer following the Law on Public Procurement
- Prepared Technical Assistance Guidance Memorandums to help train Municipalities and designers prepare specifications (technical conditions) suitable for tendering under the Law on Public Procurement.

OUTPUTS:

- Project Implementation Agreements signed with each counterpart municipality.
- Project proposals prepared and submitted to USAID-Montenegro – three proposals approved for project tendering
- Project environmental assessments prepared for each municipality
- Reviewed and enhanced specifications and drawings
- Technical Assistance Guidance Memorandums (TAGMs) on specification preparation and Bill of Quantities Preparation
- Training of municipal staff and designers on preparation of engineering documents to satisfy the needs of the Law on Public Procurement (PPL)
- Training on project development and identifying of 2nd and 3rd round projects

RESULTS/IMPACTS:

- Second and third round Projects identified for further development and final submission.
- Review and approval procedures formalized to expedite submission of future proposals, and to be incorporated in project schedules

- Identified probable obstacles to rapid implementation encountered in working with municipalities. Remedial measures developed and assistance targeted to ensure a more effective and efficient process going forward.
- Municipalities and designers placed on development schedules
- Tender documents completed for three of the 1st round projects

<p>(B) Improve Municipal Financial Management Skills and Practices</p>

See Partnership 1st Quarter Report 2002 for documentation on these accomplishments.

<p>(C) Familiarize municipalities with the new Public Procurement Law, and provide active municipal project management pursuant to the new law</p>

In August 2001, the Parliament of Montenegro enacted the Law on Public Procurement (PPL). The Law provides a comprehensive, rules-based, procurement system for the Republic, 21 local governments and other public entities. This Law is intended to conform to international standards and to "...make provisions for the public procurement of goods, works and services; to introduce greater transparency and integrity; to establish entities having responsibilities and authorities to administer the system efficiently; to offer equitable access to the private sector to government contracts and, to render corruption more difficult."

In November 2001, accompanying public procurement rules and forms were approved. Together with the Law, these rules and forms represent a new procurement system that significantly departs from current local government procurement practices. For example, the Law establishes a Public Procurement Commission, which is charged with rendering procurement law interpretations, overseeing local government procurement activities and making judgments on breaches of the Law. Local governments are also required to appoint a Public Procurement Officer. These Officers are charged under the Law with: (i) issuing solicitation documents, (ii) prequalifying suppliers; (iii) supervising standardization of goods; (iv) delegating powers of negotiation and powers to enter into contracts; (v) issuing letters of acceptance for goods and works; (vi) signing purchase orders, and (vii) appointing coordinators and staff for procurement committees.

MISP Prequalification of Contractors

- In order to provide for first round bidding in a timely and efficient manner, by February 2002 ICMA/MISP had completed a robust and transparent prequalification exercise in accordance with the new Public Procurement Law and accompanying rules and standard forms, and within USAID prequalification parameters. Advertisements were placed in the national press of Montenegro, Serbia and Kosovo,

as well as Bosnia and Herzegovina, Croatia and Slovenia. ICMA/MISP received 183 applications for the following five different “Functional Work Areas”:

- Water Systems
- Sewage and Wastewater Systems
- Roads and Streets
- Solid Waste
- Parks and Municipal Infrastructure

Partner municipalities were kept abreast of these prequalification activities as they developed. ICMA/MISP then proceeded to collate, catalogue and initially review the 183 applications. Seven Public Procurement Officers from partner municipalities and two MISP staff members were invited to act as evaluators and three evaluation committees were established. This exercise took place in Podgorica over two days from January 30-31, 2002. Immediately prior to the evaluations, ICMA/MISP provided training to the Public Procurement Officers in the pertinent prequalification provisions of the Public Procurement Law, rules and standard forms. The evaluators were provided with clear instructions and a set of forms for undertaking the exercise. The evaluators, based on a pass/fail set of criteria dealing with firm profile, work experience, equipment, personnel and financial position, passed 45 applications submitted by 19 construction contractors.

On February 11, 2002, ICMA/MISP invited the Public Procurement Officers back to Podgorica to review the final prequalification results. They were provided at that time with the opportunity to clarify and questions or concerns arising from the exercise. In accordance with the Public Procurement Law, they signed the final Report of Prequalification and were provided a copy of the report. ICMA/MISP also provided a copy of the report to USAID and the Public Procurement Commission of Montenegro.

Contract Tendering

- In January 2002, ICMA/MISP initiated a detailed assessment of the provisions of the Public Procurement Law, rules and standard forms dealing with construction bidding and contracting. This assessment revealed that some forms developed under the Law for this purpose were (and remain) deficient in several important aspects. ICMA/MISP therefore revised these forms to bring them more into line with generally accepted international construction bidding and contracting documents. Additionally, ICMA/MISP incorporated certain mandatory USAID clauses into the forms to bring them in line with U.S. Government Host Country contracting requirements. Final bid and contract document templates were submitted to USAID for review and approval in mid-March 2002.

Municipal Cooperation and Project Implementation Agreements

- In accordance with the original ICMA/MISP Implementation Proposal, Municipal Cooperation Agreements (MCA) were drafted and signed with each partner municipality. These agreements, drawn up in English and Serbian, make explicit the respective overall responsibilities of each party during the life of ICMA/MISP. From the standpoint of each municipality, this includes strict adherence to a Code of Ethics designed to preclude conflicts of interest or corruption, with the understanding that a

breach of the Code may result in termination of the municipality's participation in ICMA/MISP and in legal action against those who have violated any provisions of the Public Procurement Law.

- Project Implementation Agreements (PIA) were also drafted. They are intended for each particular ICMA/MISP project and make explicit the respective responsibilities of each party from that standpoint. This includes formalization of in-kind and joint financing contributions and the responsibilities and risks of each municipality with regard to each contract signed between ICMA/MISP and the selected contractor. Municipalities are also responsible under each PIA for establishing a Project Implementation Unit. Members of the PIU will serve as liaisons and counterparts during the implementation stage of the project. The Members are also expected to serve on bid opening and evaluation committees.

OUTPUTS:

- 19 construction contractors prequalified for 5 different Functional Work Areas
- 7 Public Procurement Officers trained in prequalification procedures
- Construction bid and contract documents developed in accordance with international standards using Public Procurement forms
- Municipal Cooperation Agreements signed with all partner municipalities
- Project Implementation Agreements signed for first round projects in Kotor, Nikšić, Tivat and Ulcinj

(D) Improve Municipal Constituency Outreach Skills
--

See partnership 1st Quarter Report 2002 for documentation on these accomplishments.

III. CHALLENGES AND ISSUES

PERSONNEL

MISP Chief Engineer, Justin Evans resigned from the project in late February.

The short-term loss of staff in this position had a minor impact on the project. ICMA immediately began recruiting for a replacement, and hired a new Chief Engineer in March. In the interim, the MISP Director worked to mitigate project delays by temporarily assuming the role of Chief Engineer. These staffing actions maintained programmatic momentum and resulted in accelerating project development.

MISP also encountered difficulties identifying qualified local engineers for the project. The decision was made in December to expand the search from Montenegro to a broader regional area. As a result of the regional search MISP was able to, early in the 1st quarter 2002 hire three highly qualified senior engineers

PROJECT DESIGN & SUBMISSION OF PROJECT PROPOSALS

In order to expedite the first round of projects, USAID-Kosovo directed ICMA to waive the training component, submission of cost recovery plans and CIPs normally required from MISP project proposals. Although this was deemed necessary in order to initiate the first round of projects before the end of the construction season, the omission of these program components has had ramifications on the municipalities' capacity to submit adequately prepared project proposals.

Further, municipalities and their designers are ensconced in over 5 decades of minimalist project development processes and design practices. These processes and practices are no longer suited to the requirements and practices under the new PPL. Current design practice is predicated on the former 'Direct-Agreement' model of construction contracts. Under this model, a designer would design to the level whereby a contract could be tendered through a 'direct agreement' process with a contractor, the selected contractor would then complete the design process and negotiate a final cost. In many respects it had aspects of a 'design-build' (two-stage bidding/turnkey) delivery mechanism but with out a transparent two-stage bidding process or formalized design-build conditions of contract.

Although ICMA/MISP is to, per early program direction, directly tender the 1st round Works, it is still the municipalities and their designers who have the lead and are responsible for the timely development of suitable designs and adequate design documents. The problem is further compounded by designers historically being given low design budgets by the municipalities, and then tailoring the level and quality of design to the budget, rather than to project needs. This has proven to be the greatest obstacle to providing adequate tender documents

MISP is not structured to provide design monies to municipalities to relieve the inadequate design problem – MISP can provide only construction monies. However, MISP is using in-kind counterpart contributions as an inducement to encouraging municipalities to fund and require of their designers adequate designs. Reasonable up front design and associated costs will be allowed as in-kind counterpart contributions, thereby reducing municipal construction cost joint financing burdens. Additionally, MISP has undertaken, 'design enhancements' of project design documents, in order to accelerate the design completion process and allow project tendering under the PPL. The 'enhanced' designs will also function as training guides.

Similar problems are anticipated during the construction administration phase of each project. The new PPL assigns, through Project Managers and Supervisors, significant administrative and technical oversight responsibilities to Contracting Authorities (in this case the municipalities). Historically, municipalities did not provide the level of oversight inherent in the PPL Contract Conditions and associated documents, and the law per se. To help overcome construction oversight difficulties MISP has begun to prepare a set pf procedures and forms to be used by each Project Manager and designated inspectors.

The former CTO directed that ICMA was to bid the Works, rather than tendering by the municipalities as originally envisioned. This resulted in ICMA needing to prepare tender documents that satisfied the sub-contracting requirements of a USAID and were harmonized with the new Law on Public Procurement. It also required that ICMA submit the tender documents to USAID for review and approval. The result of requiring ICMA to sub-contract

the 1st round prolonged the document preparations and pushed back the dates of tendering for the first few projects.

First round projects for all seven municipalities were approved in concept by the former CTO in an earlier limited approval process administered through USAID-Kosovo. Since the original approval, several municipalities have altered the priority of projects, or ICMA/MISP has revised project acceptance recommendations based on further review of the projects following a more exhaustive approval process. The result has been to delay the completion of designs and engineering documents needed for tendering.

CONTRACTOR RESPONSIVENESS TO PREQUALIFICATION SOLICITATION DOCUMENTS

Private sector contractors in Montenegro and in other former Yugoslav republics suffer from several decades of minimalist construction contracting bidding practices under the earlier socialist regime. ICMA/MISP anticipated this before soliciting prequalification applications by designing clear instructions and formats for submission of data, and by providing a transparent feedback process, including a prequalification conference, allowing contractors receive answers to any questions or issues arising from prequalification requirements.

Despite this effort to anticipate problems and to help contractors to be as responsive to the solicitation documents as possible, 171 of 183 – or 93 percent of the applications submitted – were in some way deficient. These deficiencies were principally related to a lack of backup documentation for each prequalification criterion, but also included data submitted in confusing or incorrect formats, and failure to submit information within requested timeframes.

Still intent on providing contractors every reasonable opportunity to prequalify, ICMA/MISP requested additional information or clarification of existing data where needed from contractors in advance of the evaluation. The staff time and resources put forth toward this additional effort was substantial and resulted in a delay in finalizing the prequalification exercise. However, had ICMA/MISP not put forth this additional effort, the resulting pool of prequalified contractors would have been so small or weak as to nullify the results of the prequalification exercise.

Nevertheless, many contractors did not respond to this request for additional information or the information they submitted was only marginally better than what ICMA/MISP originally received. Forty-nine applications were rejected outright as being grossly non-responsive to the solicitation documents. Seventy-seven applications were rejected when submitted for evaluation. In the end, 69 percent of the applications submitted failed to stand up to the solicitation documents. It therefore seems clear that a large percentage of Montenegrin and other regional private sector contractors lack the necessary experience, skills and perhaps motivation to produce professional, responsive documentation required for public procurement activities.

PUBLIC PROCUREMENT LAW BID AND CONTRACT FORMS

Although ICMA/MISP was directed to use USAID regulations for the first round of infrastructure procurements, from the standpoints of training and harmonization of efforts with the second round of procurements – where the partner municipalities will be responsible

for issuing bid documents – it was decided to use relevant bidding and contracting forms from the Public Procurement Law. These forms include: F.7.2.4.W (which contains Instructions to Bidders, Conditions of Contract and Contract Data); F.7.4.2.W.1, Contractor Offer; F.7.2.4.W.2, Qualification Information; F.23.4.1, Declaration of Independence; and F.26.1.4.1, Bid Security Form.

During the preparation in January and February 2002 for first round of bidding, ICMA/MISP identified several deficiencies in these forms, which can be categorized as follows:

- Lack of contract and work supervision definitions
- Ambiguous or incorrect definitions
- Missing Serbian text when compared against the English version of the forms
- Insufficient explanatory language in bid and contract clauses
- Lack of harmonization of terms between various forms
- Incorrectly numbered forms

The additional staff time put forth toward identifying and correcting these deficiencies was substantial and resulted in a delay in finalizing the bid and contract templates, which were subsequently submitted to USAID for review and approval.

IV. MAJOR ACTIVITIES PLANNED FOR THE NEXT QUARTER

(A) Improve Municipal Project Planning And Design Capabilities

- Continue identification and finalization of 2nd and 3rd round projects
- Assist municipalities with preparation and submission of final 1st, 2nd, and 3rd round project proposals
- Assist municipal counterparts and their designers to finalize design documents
- Provide additional technical assistance guidance memoranda (TAGMs)
- Continue to provide training per the overall MISP training framework and schedule

(B) Improve Municipal Financial Management Skills And Practices
--

- Finalize cost recovery improvement report
- Finalize software design and programming
- Finalize cost recovery training
- Conduct 3-day cost recovery workshop
- Review newly proposed municipal projects for conformance with CIP, and develop procedures for amending CIP, including citizen participation

(C) Familiarize municipalities with the new Public Procurement Law, and provide active municipal project management pursuant to the new law

- Issue bids for first round projects in all seven partner municipalities
- Establish Project Implementation Units for all first round projects
- Actively involve Public Procurement Officers and other municipal officials in bid opening and evaluations for all first round projects
- Conduct regional training seminars in the Public Procurement Law, rules and forms, and provide on-site training and assistance to municipalities ready to undertake second round procurements
- Oversee and supervise municipalities as they prepare and issue bids for second round projects

(D) Improve Municipal Constituency Outreach Skills

In conjunction with Partnership:

Citizen Participation in Budget Hearing Process– Pilot projects:

- Monitor the process in the municipality of Niksic; provide additional technical assistance.
- Sum up workshop with lessons learned and best practices from the experience with the pilot municipalities.
- Final report / case studies / manual on Citizen Participation in Budget Hearing Process